

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATHAN R. HOYE,)
)
Plaintiff,) 2:18-CV-00467
)
vs.) Judge Nora Barry Fischer
)
OFFICER KELLY, Allegheny County)
Officer, and COMMONWEALTH OF)
ALLEGHENY,)
)
Defendants.))

NATHAN R. HOYE,)
)
Plaintiff,) 2:18-CV-00933
)
vs.)
)
COMMONWEALTH OF ALLEGHENY,)
County Criminal Division,)
)
Defendant.))

NATHAN HOYE,)
)
Plaintiff,) 2:18-CV-1256
)
vs.)
)
COMMONWEALTH OF ALLEGHENY)
COUNTY,)
)
Defendant.))

MEMORANDUM ORDER

The above three cases were referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72. In all three cases, Plaintiff, Nathan Hoye, alleges that on January 25, 2018, Officer Kelly filed false charges against him for assault by a prisoner against an officer in violation of his Eighth Amendment rights against cruel and unusual punishment.

On October 22, 2018, the Magistrate Judge issued a Report in each case recommending that the Motion for Leave to Proceed *in forma pauperis* be denied as Plaintiff had not satisfied the imminent danger exception to the three strikes rule of 28 U.S.C. § 1915(g). Plaintiff was served with the Report and Recommendations at his listed address of record and advised that written objections were due by November 8, 2018. On November 7, 2018, the Report and Recommendations were returned unopened to the Court with the following notation on the envelopes: “RTS. Temp. Release.” Upon inquiry, the Court was informed that Plaintiff had been transferred to Torrance State Hospital and was unable to file timely objections. On November 8, 2018, the Court *sua sponte* filed an Order granting Plaintiff an extension until December 10, 2018, to file written objections to the Report and Recommendations.

On December 4, 2018, the Court was informed that Plaintiff remained in custody at Torrance State Hospital. The cases were then statistically closed until such time as Plaintiff notified the Court of his return to Allegheny County Jail. On January 3, 2019, Plaintiff notified the Court that he had been returned to Allegheny County Jail. The cases were reopened and Plaintiff was granted an extension until January 24, 2019, to file his written objections. To date,

Plaintiff has not filed any objections in these cases nor has he sought an extension of time in which to do so.

After a review of the pleadings and documents in each of these cases, together with the Report and Recommendations, the Court finds that the Magistrate Judge made a sound recommendation. Hoye alleges that Officer Kelly falsely charged him with assault by a prisoner on January 25, 2018. Hoye's criminal case is currently scheduled for a non-trial jury before Judge Alexander P. Bicket on February 12, 2019. As the United States Court of Appeals for the Third Circuit has instructed, a plaintiff must allege facts showing that he was in imminent danger at the time the complaint was filed. *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir.), *cert. denied*, 533 U.S. 953 (2001). The following Order is entered:

The Motion for Leave to Proceed *in forma pauperis* filed in each of the above cases is **DENIED**, and these actions are dismissed without prejudice to Plaintiff's right to reopen them by paying in each case the full statutory and administrative filing fees, totaling \$400.00. The Report and Recommendation of the Magistrate Judge filed in each case, dated October 22, 2018, hereby is **ADOPTED** as the Opinion of the District Court.

IT IS SO ORDERED this 8th day of February, 2019.

/s Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: NATHAN R. HOYE
167618
Allegheny County Jail
950 2nd Avenue
Pittsburgh, PA 15219-3100